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April 20, 1998

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, D.C. 20554

Attention: Stop Code 1800D5
Chief, Allocations Branch

Re: Amendment of Section 73.202(b) of the Commission Rules
Table of FM Channel Allotments
(DeRuyter and Chittenango, New York)
MM Docket No. 98-22; RM-9183

Dear Ms. Salas:

On behalf of Cox Radio, Inc. ("Cox"), we hereby transmit to you an original and four copies of Cox's comments in response to the Commission's *Notice of Proposed Rulemaking* in the above-captioned proceeding.

Please contact the undersigned if any questions should arise.

Respectfully submitted,


Peter Siembab

Enclosure

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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APR 20 1998

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b))
Table of Allotments,) MM Docket No. 98-22
FM Broadcast Stations.) RM-9183
(DeRuyter and Chittenango, New York))

To: Chief, Allocations Branch
Stop Code 1800D5

COMMENTS OF COX RADIO, INC.

Cox Radio, Inc. ("Cox"),^{1/} by its attorneys, hereby submits these comments in response to the Commission's *Notice of Proposed Rulemaking* in the above-captioned proceeding.^{2/} Cox opposes the petition of Cram Communications, LLC ("Cram"), licensee of WVOA(FM), to reallot Channel 286B from DeRuyter, New York, to Chittenango, New York, and modify Station WVOA's license to specify Chittenango as its community of license. As shown herein, Cram fails to demonstrate the public interest benefit in removing DeRuyter's sole local service. Nor does Cram explain why it cannot already provide specialized service to Chittenango. Moreover, its proposal undermines the mandates of Section 307(b) of the Communications Act of 1934, as amended (the "Act")^{3/} and the Commission's goal of localism. For these reasons, Cram's petition should be denied.

^{1/} Cox is the licensee of five radio stations in the Syracuse radio metro market.

^{2/} *Amendment of Section 73.202(b), Table of Allotments, FM Broadcast Stations. (DeRuyter and Chittenango, New York), DA 93-326 (Rel. Feb. 27, 1998).*

^{3/} 47 U.S.C. § 307(b) (1994).

I. Cram's Petition Fails to Demonstrate the Rare Circumstances Required to Justify the Loss of DeRuyter's Sole Local Service.

Cram proposes the reallocation of Channel 286B to Chittenango, a suburban community less than five miles outside of the Syracuse Urbanized Area, from DeRuyter, a small farm community in upstate New York where WVOA is the sole local broadcast service. This allotment proposal, however, flies in the face of the Commission's policy not to remove a community's sole local transmission source.^{4/} Only in "rare circumstances" will the Commission grant a waiver of this policy.^{5/} In evaluating requests for waiver of the policy, the Commission compares the existing allotment against the proposed allotment using the FM allotment priorities.^{6/} Because Cram's petition concerns equal priorities, the reallocation of WVOA to Chittenango should be reviewed under the fourth allotment priority, other public interest matters.^{7/} As shown herein, the public interest is served by retaining WVOA's allotment to DeRuyter.

^{4/} See *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 4 FCC Rcd 4870, 4874 (1989), *recon. granted in part*, 5 FCC Rcd 7094 (1990) ("*Community of License MO&O*").

^{5/} See *Community of License MO&O*, 5 FCC Rcd at 7096.

^{6/} *Id.* In determining whether a preferential allotment would result from an allotment petition, the Commission compares the existing arrangement of allotments with the proposed arrangement using the following FM allotment priorities: (1) first full-time aural service; (2) second full-time aural service; (3) first local service, and (4) other public interest matters. See *Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982). Cram proposes to provide the first local service to Chittenango, and thus falls under the Commission's third allotment priority. In reallocating WVOA, DeRuyter would lose its first local service, and thus also fall under the Commission's third allotment priority.

^{7/} See, e.g., *Oxford and New Albany, Mississippi*, 3 FCC Rcd 6626, 6626 (1988) (noting that when allotment criteria are equal or inapplicable, the Commission bases its decision on the fourth priority, other public interest matters).

A. DeRuyter Has a High Expectation of Continued Service.

Removal of local service presumptively disserves the public interest.^{8/} The Commission has held time and again that communities of license have a legitimate expectation that existing transmission service will continue.^{9/} This expectation may be particularly acute in instances where the station has been licensed to the community for decades. WVOA has been licensed to DeRuyter for over fifty years^{10/} and, consequently, the community has grown to rely on the station to provide programming that addresses the community's problems, needs and interests. Normally, the Commission weighs a community's expectation of continued service independently against the service benefits that may result from reallocating a channel and grants the removal of a service only if there are sufficient public interest factors to offset the expectation of continued service.^{11/} However, Cram has not provided any justification as to why it should have its obligations to DeRuyter severed. WVOA has served DeRuyter for almost fifty years and the loss of the station's service to DeRuyter would leave the community without any local broadcast service. Cram clearly understood WVOA's relationship with DeRuyter when it purchased the station in 1996 and should not now cry that the community is unworthy of a radio station.^{12/}

^{8/} See *Community of License MO&O*, 5 FCC Rcd at 7096.

^{9/} See *id.* at 7097.

^{10/} See *Forus FM Broad. of New York, Inc.*, 104 FCC 2d 529 (1986) (rejecting the previous licensee's request to relocate WVOA's main studio outside the community of license); RADIO ADVERTISING SOURCE 794 (Apr. 1998).

^{11/} See *Community of License MO&O*, 5 FCC Rcd at 7097.

^{12/} Cram's proposal may be the first step in a two-step process of leap frogging its way over Section 307(b) scrutiny but eventually serving the Syracuse market. For example, if

B. Cram's Petition Wholly Fails to Demonstrate How the Loss of WVOA to DeRuyter Is in the Public Interest.

Cram relies on Chittenango's larger population as the sole public interest benefit for reallocating WVOA. However, under Cram's rationale for granting the reallocation, every larger community would be more deserving of a first local service than a smaller community. The logical conclusion of Cram's rationale would be that only large metropolises would have local radio service and rural areas would have none. Such a result would be inconsistent with Section 307(b) of the Act and not in the public interest.^{13/}

Indeed, the benefits of serving Chittenango's larger populated community are deceptive since Chittenango is merely a suburb of Syracuse. Chittenango is less than fifteen miles from Syracuse and less than five miles from the Syracuse Urbanized Area. Chittenango's population is 1/35th that of Syracuse.^{14/} A majority of Chittenango's residents work in Syracuse^{15/} and rely

the instant petition is granted, Cram may later submit a minor change application proposing a transmitter site substantially closer to Syracuse. Thus, WVOA would increase its advertising revenues and station value by ultimately gaining a valuable 1 mV/m toehold in a metropolitan area and avoiding Section 307(b) scrutiny that would have otherwise prohibited such a move if it had been requested at one time.

^{13/} The Commission in *Sumter, Orangeburg and Columbia, South Carolina*, 11 FCC Rcd 6376 (1996), rejected a station-to-population ratio calculation on the basis that such results would lead to a gravitation of broadcast services away from rural areas to more populous urban areas and, thus, would be inconsistent with Section 307(b) of the Communications Act.

^{14/} While Cram's petition characterizes Chittenango as a growing community and DeRuyter as one on the decline between 1970 and 1990, current data demonstrates that DeRuyter is growing at a pace almost twice as fast as Chittenango. Between 1990 and 1996, DeRuyter increased by 16.2% while Chittenango grew by 8.6%. Estimates of the Resident Populations of New York State Villages <<http://205.232.252.23/nysdc/ftp/subctypo/villpop.htm>>. It would be unfair to DeRuyter for it to lose its sole local service just when it is beginning to mature.

^{15/} Telephone interview by Nicole Mathis with Theresa Vincelette, Chittenango Village Clerk (Apr. 15, 1998).

on Syracuse media. Chittenango is served by two daily Syracuse newspapers, THE POST-STANDARD and THE SYRACUSE HERALD JOURNAL, but not by a daily Chittenango newspaper. Chittenango does not have its own franchised cable system.^{16/} Chittenango has only one zip code and does not have its own telephone directory. Chittenango is an unincorporated village with no public transportation system. It is linked to the metropolis by a Syracuse metro bus line. The Town of Sullivan operates Chittenango's only library, and provides parks and recreation services as well as fire services. Onondaga County supplies Chittenango with its water. Even Cram's petition concedes that Chittenango is a bedroom community for Syracuse.^{17/} Based on these facts, the Commission should treat WVOA's reallocation as a proposed Syracuse allocation. Where a petitioner requests to reallocate a station to a well-served urban community at the expense of a rural community that would lose its sole local service, the Commission has said that it would not grant the reallocation.^{18/} Therefore, Cram's petition should not be granted because Cram is proposing to reallocate WVOA to a well-served suburb of Syracuse at the expense of DeRuyter's sole local service.

II. Cram Offers No Evidence Why It Cannot Provide Chittenango With Specialized Service.

Chittenango is within WVOA's 70 dBu contour and, thus, WVOA already provides service to that community. If Cram wants to serve the interests of Chittenango, there is nothing

^{16/} 1997 CABLE & TV STATION COVERAGE ATLAS 533 (1997). The lack of a cable system weighs against a finding that the community is independent from the nearby metropolis. *See Elizabeth City, North Carolina, and Chesapeake, Virginia*, 9 FCC Rcd 3586, 3589 (1994).

^{17/} *See Cram Communications, LLC Petition for Rulemaking* Exb. (filed Sept. 12, 1997).

^{18/} *See Community of License MO&O*, 5 FCC Rcd 7097.

that prevents it from doing so. What Cram appears to be requesting is relief from serving the needs of DeRuyter, but Cram has offered no justification other than Chittenango's greater population for abandoning DeRuyter. Nevertheless, when a station already provides a 70 dBu signal to its desired community but provides no evidence that it was unable to provide the community with specialized service, the Commission has consistently denied petitions to reallocate stations.^{19/} Therefore, without any explanation for why WVOA is unable to provide Chittenango with specialized service, Cram's petition should be denied.

III. Cram's Proposed Allotment is Inconsistent with Commission Policy.

Under the Act, the Commission is obligated to distribute licenses among the various communities equitably, fairly and efficiently.^{20/} Granting Cram's petition, however, would violate this mandate. Reallocation of a channel from a rural to an urban area, such as that proposed by Cram, results in a gradual loss of voices in rural communities. Left unchecked, radio stations will eventually gravitate solely around urban areas, leaving rural communities without broadcast outlets to address their local needs. Indeed, the loss of WVOA as the sole local service of a small rural town typifies the concern expressed in *Community of License MO&O* that broadcast services will gradually migrate away from rural communities.^{21/} Without a local broadcast service, the reporting of DeRuyter's events and the dissemination of its opinions would cease—WVOA instead would air programming geared toward the well-served

^{19/} See, e.g., *Sumter, Orangeburg and Columbia, South Carolina*, 11 FCC Rcd at 6377; *Bronson and Cross City, Florida*, 10 FCC Rcd 8102, 8102-03 (1995); *Brunswick and Waycross, Georgia*, 8 FCC Rcd 17, 18 (1992).

^{20/} 47 U.S.C. § 307(b) (1994).

^{21/} See *Community of License MO&O*, 5 FCC Rcd at 7096.

urban area of Chittenango. However, because of its close proximity and interrelationship with Syracuse, Chittenango's needs may be already adequately served by stations licensed to Syracuse. In contrast, DeRuyter is sufficiently distinct and remote that its needs may not be met by any other stations in the region. Consequently, the reallocation of WVOA to Chittenango undermines not only the Commission's mandate under Section 307(b) of the Act but its goals of localism as well.

IV. Conclusion.

DeRuyter has a legitimate expectation of continued service from WVOA, its sole local service. That DeRuyter is a rural community, smaller in population than Chittenango, is no basis for depriving DeRuyter of local service. Cram has neither justified severing long-standing ties between WVOA and DeRuyter nor shown how its proposal is in the public interest. WVOA's continued allotment to DeRuyter is consistent with Section 307(b) of the Communications Act and Commission policy to protect against stations migrating to well-served urban markets. For these reasons, Cox respectfully urges the Commission to deny Cram's petition to reallocate Channel 28.6B to Chittenango, New York.

Respectfully submitted,

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By: 

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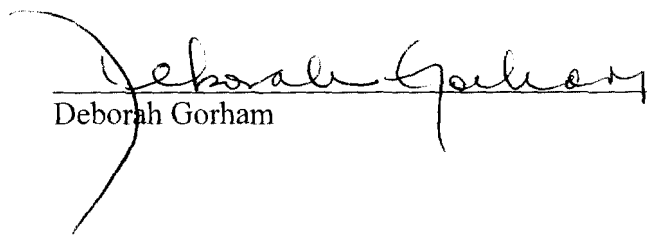
CERTIFICATE OF SERVICE

I, Deborah Gorham, hereby certify that a true and correct copy of the foregoing "Comments of Cox Radio, Inc." was sent on this twentieth day of April, 1998, via first-class United States mail, postage pre-paid, to the following:

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